RULES OF THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

EFFECTIVE SEPTEMBER 29, 1995
(Including Amendments)

SCOPE AND EFFECTIVE DATE

These rules for the district court of the First Judicial District shall become effective upon approval by the Supreme Court and publication in the Nebraska Advance Sheets and shall supplement the Uniform District Court Rules of Practice and Procedure adopted by the Supreme Court.

Adopted effective September 29, 1995.

RULE 1-1

TERM OF COURT

Terms of the Court may be set by the judge in each County. Counsel should contact the Bailiff or Clerk of the District Court in each County to ascertain said terms.

Adopted effective September 29, 1995; amended September 21, 2005.

RULE 1-2

CONTINUANCES

In addition to the requirements set forth in Neb. Rev. Stat. § 25-1148 (Reissue 1995), a Motion for Continuance shall set forth whether the opposing party has an objection. If the opposing party does not object to the continuance, the party filing the motion shall be responsible for arranging, as soon as practical, a new date and time with all opposing parties and the Court. If the opposing party does object, it is the responsibility of the party filing the motion to set the motion for a continuance hearing. Except for exigent circumstances, a motion for a continuance shall be made at least three (3) working days prior to the hearing for which the continuance is requested.

Adopted effective September 29,1995; amended September 21, 2005.

RULE 1-3

JOURNAL ENTRIES

It shall be the duty of the party directed by the Court to promptly prepare a proper journal entry, order, judgment, or decree. The proposed journal entry shall be submitted to opposing counsel for approval as to form and submitted to the Court for its signature within ten (10) days after entry of the decision or order.

Adopted effective September 29, 1995; amended September 21, 2005.

RULE 1-4

DISSOLUTION ACTIONS

A. Property Statements: Where the action involves a division of property by the Court, each party shall prepare a property statement setting forth assets, liabilities, and any other information concerning property germane to the case at bar. The party filing the action shall have sixty (60) days from the date of filing to prepare, furnishing a copy to the opposing party. The responding party shall then complete the property statement by adding to it any additional property and that party's estimates of value of all property listed. The responding party's additions shall be served upon the initiating party within thirty (30) days after the filing of the initial statement. The property statements shall be in the format of Exhibit A attached hereto. When property division is contested at final hearing, the parties shall prepare a joint property statement for use as an exhibit. Either party may receive an extension of time for filing or completing property statements on written motion and good cause shown. Except by agreement of the parties or order of the Court, amendments to the property statement shall not be permitted unless filed at least ten (10) days prior to trial. Property Statements shall not be filed with the Court but proof of service shall be filed.

B. Temporary Hearing: Unless otherwise ordered, temporary applications shall be governed by Unif. Dist. Ct. R. of Prac. 4(B) (rev. 2000). Except where a party appears pro se and live testimony is required, or unless otherwise ordered, evidence shall be submitted by affidavits, which shall be exchanged by the parties at least forty-eight (48) hours prior to the hearing. Responsive affidavits shall be exchanged at least twenty-four (24) hours prior to the hearing. Except for good cause shown, no more than five (5) affidavits, or alternatively, no more than fifty (50) affidavit pages (including exhibits attached thereto), will be considered by the Court at the time of the temporary hearing.

C. Ex Parte Custody Orders: No ex parte order shall be entered in a domestic relations case without one (1) or more supporting affidavits from a party or his or her witnesses. Except for good cause shown, no ex parte temporary order shall be entered in a pending case if the opposing party is represented by counsel or a guardian ad litem/attorney for minor(s) has been appointed. If an ex parte order is issued, it shall be served upon the opposing party or counsel forthwith, and a temporary hearing shall be held forthwith.

D. Contested Custody: If an issue concerning custody of a minor child exists, the Court may appoint a guardian ad litem/attorney for the minor(s). In such event, the Court will order an initial deposit of fees to be paid by the parties into the Court within a specified time period. If no time period is specified by the Court, it shall be 20 days. Initial fees shall be allocated between the parties in the discretion of the Court, subject to modification and the assessment of additional fees at the time of the final hearing. Those claiming indigent status may apply to the Court for a waiver of such fee assessment. Such an application must be accompanied by an affidavit establishing poverty. When a guardian ad litem/attorney for the minor child makes application for payment of fees in a case involving a claim of indigence, copies of the fee application and notice of hearing shall be served upon the County Attorney, who may appear at the hearing to object to payment of the same.

E. Final Hearings/Pretrial Conferences: Final hearings in all dissolution cases shall be set for fifteen (15) minutes uncontested hearing. If the case is not settled, the parties shall notify the Bailiff or Clerk for setting of a pretrial. Pretrials may be waived by the Court. No case will be docketed for final hearing or pretrial until at least both parties have prepared a property statement

or the Court waives such preparation for good cause. In the interests of preserving Court time at final hearing, the parties may offer evidence in the format of Exhibit 1 attached hereto; however, nothing in this rule shall be construed to waive the requirement of live testimony.

F. Every Decree shall contain the vehicle identification numbers, and real estate shall be described by legal description as opposed to street address.

G. Leaving the State: Every order for child custody, temporary or permanent, shall contain language substantially as follows:

A party exercising custody of a minor child is ordered not to move the child outside the State of Nebraska. Anyone intending such a move must first:

(1) Make written application to the Court; and

(2) Give notice of the application and hearing to the other party as required by law.

H. Reduction in Support for Periods of Visitation: Whenever a temporary or permanent child support order provides for a reduction in child support while a non-custodial parent has possession of the child or children, the following procedure shall be utilized:

(1) The order shall clearly state the time period and percentage that the non-custodial parent's child support obligation shall be reduced.

(2) The reduction shall be automatically deducted unless the custodial parent submits an affidavit within thirty (30) days after the child or children return to him or her stating that the non-custodial parent was not in the possession of the child or children for the requisite time period. If such an affidavit is filed, a hearing shall be held to determine whether the reduction shall be allowed.

(3) Failure of the custodial parent to file such an affidavit within thirty (30) days shall constitute a waiver of objection to the reduction of child support.

I. Rule for Mediation in Domestic Relations Cases:

1. Parties to domestic-relations matters involving children are required to attend the District Court parent education program required by the court within sixty (60) days from receipt of service of process. This includes filing for dissolution of marriage and determination-of-paternity cases, which involve issues of custody and/or visitation. Effective on January 1, 2008, motions to compel existing orders which involve parenting issues, applications to modify decrees of dissolution which involve parenting issues, and applications to modify decrees of paternity which involve parenting issues shall be subject to the requirements of this rule, and both parents are required to attend the parent education program.

If the court deems it advisable, the parties may be required to complete a second level parenting class or the children of the parties may be referred to a class.

Prior to July 1, 2010, the parties shall submit a parenting plan to be approved by the court. The parenting plan shall be developed by the parties or their counsel, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall either create the parenting plan in accordance with the

Parenting Act (*parenting plan samples available from the District Court Clerk)* or refer the case to an approved mediator. At any time in the proceeding, the Court may refer a case to an approved mediator in order to attempt resolution of any relevant matter. Until July 1, 2010, either party may terminate mediation at any point in the process.

On or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be required to meet and participate in mediation services or another assigned mediator to complete a parenting plan or visitation schedule, including child custody, visitation, grandparent visitation, and any other issues relating to the children that may be susceptible to mediation. No trial date will be scheduled until attendance at the required parent education seminar has been completed and mediation to resolve custody and/or visitation issues has been attempted, provided, however, that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months. It is further provided that, notwithstanding the language in this paragraph, domestic-violence issues may, upon consideration by the trial court, disqualify the parties from mediation.

On or after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held.

Parties or counsel are required to notify the Mediation Services Office of any request for delay in assignment of a mediator if the parties and counsel are attempting to negotiate a parenting plan agreement, which agreement shall be required to comply with the parenting plan checklist. In the event there is failure to request a delay of mediator assignment, a mediator shall be assigned pursuant to this rule.

2. The Court shall prepare an order, for distribution by the District Court Clerk, advising the filing parties and their attorneys that attendance at the parenting seminar "What About The Children" or "Communication Skills for Parents in Conflict" is mandatory and must be completed within six months (6) from the filing of the complaint. The order shall also advise the parties and counsel: (1) the parenting plans and visitation schedules may be referred for mediation; (2) that no trial date will be set until attendance at the required parent education seminar has been completed, and if required, mediation to resolve custody and/or visitation issues has been attempted; (3) that failure or refusal to participate by a party shall not delay entry of a final judgment by more than six (6) months; and (4) that domestic-violence issues may, upon consideration by the trial court, disqualify the parties from mediation. The District Court Clerk shall include this order with the filing and service packets distributed by the clerk.

3. The District Court Clerk shall maintain a list of mediators approved by the District Court judges and the Mediation Committee of the District Court. These mediators must meet State of Nebraska (or equivalent) standards for training in order to qualify. The following requirements apply to all participating mediators:

Court-approved mediators will determine their own fees and will provide a copy of their fee schedule to the Court. In order to be on the list of court-approved mediators, a mediator must agree to use a sliding-scale fee of $25 to $75 per person per hour, determined on the basis of what each party is able to pay. Court-approved mediators must also agree to take pro bono cases on an "as needed" basis. The Court will determine the need for such pro bono services, so that the burden of these cases is equitably distributed among the participating mediators.

4. Prior to participation in the program, qualified mediators will be required to attend an orientation session, which will be conducted by the Court, to review the mediation procedures, as well as the parenting plan checklist. Each participating mediator must be willing to agree to the court requirements for participation, and each mediator will be asked to sign a statement indicating acknowledgment and acceptance of the requirements.

5. When a judge refers a case for mediation, the judge will indicate the issues to be mediated, as well as any choice of a mediator if the judge has a preference. The judge may also indicate whether there is a particular mediator whom the judge does not wish to use. The attorneys for the parties may also mutually agree upon the choice of a mediator and may indicate whether they wish the parties to mediate any issues other than custody and parenting or visitation plans. If financial issues are to be mediated, the case may be assigned to an attorney mediator.

6. The attorneys will be requested to bring the parties to a Mediation Service Office forthwith or to immediately provide the Mediation Service Office with all necessary client information, so the staff can confer with the parties and their attorneys, and can discuss selection of a mediator. Unless a specific mediator has been requested, the next mediator appropriate to the parties and their needs will be assigned from the rotating list, and the Mediation Services Director will contact the mediator to confirm the mediator, who must advise the Mediation Services Director within ten (10) days of receipt of the paperwork of the date for the parties first appointment. The Mediation Services Office will attempt to screen each case for domestic violence, which would disqualify the parties from mediation, but the individual mediator may also refuse to mediate a case if the mediator determines that it would be inappropriate.

7.a. If the parties reach an agreement through mediation, the agreement shall be reduced to writing. Copies shall be provided by the mediator or Mediation Service Office to the parties and their attorneys, together with a notice informing the parties and their attorneys of their right to express their objections to the written agreement. The notice shall inform the parties and their attorneys that they have twenty-one (21) days from the date of the notice to notify the mediator or the Mediation Services Office of any written objections to the terms of the agreement. Such objections shall be specific. All matters not specifically objected to shall be deemed final. If no objections are received within twenty-one (21) days, then the agreement shall automatically be forwarded to the Mediation Services Office for final processing, pursuant to subsection (c) below.

If the parties and counsel negotiate a Parenting Plan agreement, which agreements shall comply with the Parenting Plan Checklist, the agreement shall be forwarded to the Mediation Services Office immediately after signing pursuant to subsection (c) below.

b. Upon the filing by either party or attorney of objections to the agreement, the mediator shall forthwith schedule a re-mediation session on the disputed issues identified in the objection. The mediator may charge additional fees for the re-mediation session and related expenses. Following re-mediation efforts, the mediator shall forward to the Mediation Services Office the "re-mediated agreement" which shall recite those issues which remain contested, if any.

c. Agreements or amended mediation agreements shall be forwarded to the Mediation Services Office, where said agreements shall be reviewed. A copy of the agreement or amended mediation agreement shall be forwarded, along with the appropriate certificate of readiness form, to the judge to whom the case is assigned and to the court file. For cases involving parties with no counsel, the Mediation Services Office will require the parties to complete and file with the District Court Clerk a "Certificate of Readiness" indicating that the case is ready to be set for an uncontested final hearing. Such certificates will be in a form acceptable to the Court.

d. Prior to setting a case for an uncontested final hearing, the parties shall file a "Certificate of Readiness" with a copy of the parenting plan with the Court. For cases involving parties with no counsel, the Mediation Services Office will require the parties to complete and file the certificate with the District Court Clerk. Such certificate will be in a form acceptable to the Court.

e. The "Certificate of Readiness" for final hearing shall contain the following information:

i. The full names of the parties;
ii. The case number of the case;
iii. The names, addresses, and bar number of counsel;

iv. The date on which the complaint was filed and the date of service on defendant or the date of filing of the voluntary appearance by the defendant;

v. That the parties have agreed to a parenting plan;

vi. That the parties have attended the parent education seminar required by the court;

vii. That the parties have completed child support calculations pursuant to the Nebraska Child Support Guidelines and have agreed to all financial matters contemplated by the guidelines;

viii. That the parties have entered into a written and signed property settlement agreement; and

ix. That the parties have or have not attended mediation.

f. If the parties have not agreed to any of the following: parenting plan, child support calculations, or a property settlement agreement, they should not file a "Certificate of Readiness." They should contact the bailiff to schedule further hearings.

8. The Mediation Services Office will follow up on the deadlines set by the Court and whether any extensions of time have been granted.

9. Remediation Clause cases. When the parties are mediating amendments to existing decrees or modification proceedings, they may directly request mediation through their previous mediator or may request re-assignment to a different mediator through the Mediation Services Office.

10. The Mediation Committee will be a standing committee of the District Court and will be composed of three (3) district judges, the Mediation Services Director, at least one outside mediator/advisor, and such other persons as the Committee deems necessary. The Chair Judge of Mediation Services will chair this Committee and may be consulted individually, as may be needed by the conciliation and Mediation Services Director, for answers on day-to-day operations of the mediation program.

11. The Mediation Committee of the District Court may make such other operating rules as may be needed to facilitate the beginning and continuation of this mediation program.

12. The Mediation Services Office will be designated by the Mediation Committee of the District Court. A Mediation Services Director will be appointed by the Mediation Committee of the District Court.

13. Parties that have either terminated mediation unsuccessfully or have been determined to not qualify for mediation services shall have their case set for final trial before the court as soon as possible.

Approved September 21, 2005; amended May 7, 2008.

RULE 1-5

TELEPHONIC CONFERENCE HEARINGS

A. Request for Telephonic Conference Hearing:

(1) A matter may be heard by telephonic conference call by permission of the court.

(2) Telephonic conferences requested by the moving party shall be arranged prior to the filing of the motion, and the notice of hearing shall clearly state that the hearing will be held by telephonic conference call. Telephonic conferences requested by a party other than the moving party shall be arranged three (3) days prior to the hearing, and notice shall be filed by the party requesting the hearing, together with proof of service thereof on all opposing parties.

B. Any party desiring to present evidence at a hearing must be present in person, unless leave of the Court is granted.

C. Initiation of Telephonic Conference Call:

(1) The party requesting the telephonic conference call shall be responsible for initiating the call and shall provide for all expenses of the call.

(2) The party initiating the call shall utilize appropriate equipment and systems to ensure that all persons participating have adequate quality and volume. If the Court determines that the sound quality or volume is insufficient, the Court may require the party initiating the call to utilize other means to complete the hearing by telephone.

Adopted effective September 29, 1995; amended September 21, 2005.

RULE 1-6

JURY TRIALS

A. Availability of Counsel During Jury Deliberations: Counsel will be available on short notice personally or by telephone, as ordered by the Court, during jury deliberations in the event of a verdict or a question by the jury. The Bailiff or Clerk should be kept informed of where counsel will be at all times when the jury is deliberating, unless excused by the Court.

B. Absence of Counsel on Receipt of Verdict: In civil cases, the Court will not deem it necessary that any party or any counsel be present or represented when the jury returns to the courtroom with its verdict.

Adopted effective September 29, 1995; amended September 21, 2005.

RULE 1-7

CORRESPONDENCE WITH COURT, STAMPED ENVELOPE, SIGNED COPIES

All correspondence with the Court regarding pending litigation shall refer to the subject case by case title, number, and county, and a copy of such correspondence shall be mailed to opposing counsel.

Approved September 21, 2005.

RULE 1-8

COURT FILES

Unless otherwise directed by the Court, court files may not be checked out.

Approved September 21, 2005.

RULE 1-9

MOTIONS AND OTHER FILINGS

As used in these rules, the word "motion" includes applications, special appearances, and all requests for an order from the Court. Unless otherwise authorized by the Court, all motions, except requests for continuances, shall be filed with the Clerk not less than ten (10) working days prior to the hearing. At the time of filing, the moving party shall obtain a date for hearing from the Bailiff or Clerk, depending on local practice, and provide notice to the opposing party.

Approved September 21, 2005.

RULE 1-10

EXHIBITS

Affidavits, depositions, and other proposed exhibits in support of motions shall not be filed with the Clerk unless otherwise ordered by the Court. Nothing in this rule shall prohibit any properly filed pleading from being offered and received into evidence.

Approved September 21, 2005.

RULE 1-11

WITHDRAWAL OF COUNSEL

In addition to the requirements of the Uniform District Court Rules, counsel may be permitted to withdraw from a matter upon filing an affidavit which:

A. recites that the motion to withdraw and notice of hearing has been served upon the client and all parties of record and

B. provides the client's last known mailing address.

Approved September 21, 2005.

RULE 1-12

STIPULATIONS

All stipulations shall be made in open court and recorded by the reporter or reduced to writing and signed by the parties or counsel and filed with the Court.

Approved September 21, 2005.

RULE 1-13

COURTROOM DECORUM

All attorneys and parties shall comply with the Uniform District Court Rules regarding courtroom decorum, conduct, and ordinary business attire.

Approved September 21, 2005.

RULE 1-14

SUMMARY JUDGMENTS

Both the moving party and opposing party shall submit a brief in support of or opposition to a motion for summary judgment. The brief of the moving party shall contain a separate statement of each material fact supporting the contention that there is no genuine issue to be tried and as to each shall identify the specific document, discovery response, or deposition testimony (by page and line) which is claimed to establish the same. Briefs shall be filed at the time of hearing unless leave is granted to file thereafter.

Approved September 21, 2005.

RULE 1-15

CASE PROGRESSION

In the months of February and August of each year, or when otherwise directed by the Court, the Clerk shall prepare a list of pending civil cases in which no action has been taken for six (6) months prior thereto. An order shall then be entered requiring that cause be shown, within thirty (30) days from entry of order, as to why said case should not be dismissed for lack of prosecution. Notice of said order shall be sent to all attorneys of record and pro se parties. If good cause is not shown, such cases shall be dismissed.

Approved September 21, 2005.

CRIMINAL CASES

RULE 1-16

CRIMINAL COMPLAINTS

An Information in a criminal case shall have noted thereon the statute under which each count of the complaint is brought, the class of offense, and the penalty for the same.

Approved September 21, 2005.

RULE 1-17

TRIALS AND CONTINUANCES

A. The Court should be advised of jury cases which are ready for trial at the opening of the term.

B. No criminal case set for trial will be continued or taken out of order unless a written motion for a continuance, supported by sufficient affidavits, is granted by the Court. If the motion is based upon the want of testimony by an absent witness, the affidavit shall state the substance of the witness' testimony and relate efforts which have been made to secure such testimony.

Approved September 21, 2005.

RULE 1-18

DISMISSAL OF CRIMINAL APPEALS

A. In cases where a penalty of confinement has been ordered by the County Court, no appeal shall be dismissed upon the motion of the defendant unless he or she appears personally before the District Court to request such dismissal.

B. In cases where a fine has been imposed by the County Court, no appeal shall be dismissed upon the motion of the defendant unless the defendant appears personally before the District Court to request such dismissal and a showing is made that all fines and costs have been paid.

Approved September 21, 2005.

RULE 1-19

PAYMENT OF COURT-APPOINTED COUNSEL

Court-appointed counsel shall be paid an hourly fee established by the Court and kept on file with the Clerk. Before court-appointed counsel's claim for payment is allowed, such attorney shall file a written motion for fees, positively verified, itemizing the time and expenses spent on the case. All motions for fees shall be served on the County Attorney.

Approved September 21, 2005.

RULE 1-20

INTERPRETERS

It is the duty of counsel to notify the Clerk of the Court that an interpreter is necessary. Such notice will be given as soon as possible and in no event less than ten (10) days prior to hearing. This rule is in addition to the requirements of the Rules Relating to Court Interpreters adopted by the Supreme Court.

Approved September 21, 2005.